THE

MERC

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DEPARTMENT OF CONSUMER & INDUSTRY SERVICES

EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

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INSIDE

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COMMENTS FROM THE CHAIR

by Maris Stella Swift, Chair

The weekend prior to writing this column I was fortunate to have the opportunity to speak to a group of graduate students in public administration about the functions of MERC. About ½ hour into my talk, just as I started to see the student's eyes glaze over, I began to realize once again how varied and diverse are the functions of our organization. And to that end, I began to think about our current efforts to replace Sol Sperka.

As I stated in my last column, BER Director Sperka will be retiring this March. Fortunately, Sol has been working with the Commission and the Department of Consumer & Industry Services on a new job description, and we hope to post for the position shortly. The Commission has thought long and hard about the qualifications we would like to see in our next director. Sol's expertise will be hard to come by, not only because of his years of service with the organization and institutional knowledge, but also because of his expertise in public sector labor law. The responsibilities of the position include, among other things, not only advising the Commission, but also supervising our administrative law judges, mediators, election officers, law clerks, court reporter and clerical staff. The Commission recognizes that we are not likely to find someone for the position who has Sol's breadth of knowledge and experience, but we do wish to eventually select a seasoned labor attorney who can handle the many administrative as well as legal aspects of the position. We will keep you updated on when and where the position will be posted and who to contact with questions or recommendations for the position. All of us on the Commission know what an important function Sol has played in this organization and we are committed to finding a successor who will be able to continue his efforts.

We have confirmed the dates and location for our second annual MERC Public Sector Labor Law Conference. As described elsewhere in this issue, this year the conference will be held at Ypsilanti, in co-sponsorship with the Eastern Michigan University Labor Studies Program. In response to the recommendations made by last year's attendees, the conference will run two days, June 8 and 9. By going to a two-day format we hope to tailor the workshops more precisely. We're planning introductory and advanced level workshops in specific areas, and workshops for our arbitrators, fact finders, and experienced advocates. We will continue the popular specialized forums on issues in public safety and education, and we may focus separately on higher education. We are also looking at workshops on mediation, appellate procedure and other new topics. Commissioner Barry Ott and

Director Sol Sperka will be contacting members of the Commission's Advisory Board to ask for suggested topics and speakers, and all of our readers are invited to make suggestions. Although golf is not the major emphasis of the conference, we are hoping that the later date (last year the conference was held in early May) will be a bit more conducive for those on the links than the snow and strong winds present at last year's outing in Grand Rapids.

BUREAU DIRECTOR'S COLUMN

by Shlomo Sperka, Director, BER

Readers of the MERC Messenger usually encounter the Employment Relations Commission/Bureau of Employment Relations by reading a decision or award or participating in some type of proceeding. One of my goals in writing this quarterly column is to personalize the Bureau and introduce you to the people who are the Bureau, and to let you know a little bit about how the work gets done and who is doing it. Since the last quarterly issue of the MERC Messenger there have been some changes in personnel.

Election Supervisor Margaret Paquet, who has served in that role since December, 1984, has exchanged her ballot box for the mediator's role. She is now a member of the mediation staff working out of the Lansing office and responsible for cases throughout central Michigan. As a result, while her vacancy is being filled, Bob Strassberg, our Election Officer, will be performing Marge's duties and running the Election Division on his own, together with Essie Boyd, the Election Division Secretary.

A new face at the Bureau is David Peltz, formerly a staff attorney with the Michigan Court of Appeals, who is now working with the Employment Relations Commission in drafting, writing and researching Commission decisions, and furnishing other legal assistance. He will be performing the duties which have been so ably accomplished by Julia Cardno Stern. Julia is devoting her time to hearings as an Administrative Law Judge, primarily in the representation case area. Our ALJ staff remains short for the indefinite future due to the extended illness of ALJ Bert Wicking.

Another function of this column is to recognize unusual accomplishments of our staff. During this quarter, Labor Mediator Jim Amar participated in a conference conducted by the California Foundation for the Improvement of Employer/Employee Relations. This organization was originally an activity of the California Public Employment Relations Board, and later was spun off by the California legislature as a separate non-profit foundation devoted to working with public employers and unions in the improvement of public sector collective bargaining, especially in the area of education. The presentation was entitled, "Interest Based Bargaining for Ground Zero." The panel from Michigan described an effective, cooperative bargaining relationship in a southeastern Michigan community school district and how it was started and succeeded. He was accompanied by members of the negotiating teams and together they told the story and presented training on the techniques they used.

Finally, turning from the past quarter to the coming months, one other personnel change will take place before the next MERC Messenger is published. That is the retirement from the Bureau of Labor Mediator Chuck Jamerson. Although it may be a bit premature to bid a farewell, it is not too early to salute a mediator who is well respected throughout the labor-management community for his firm, fair (and sometimes fierce) pursuit of a contract settlement. Chuck will be leaving the Bureau on January 1, 1998 and, it can be fairly said, his presence will be missed.

Focusing our telescope even further into the future, I hope to be writing one more Bureau Director's column, but more of that at another time. (However, for more information, you can see Comments from the Chair on page 1).

SIGNIFICANT MERC AND COURT DECISIONS ISSUED IN THE THIRD QUARTER OF 1997

by David Peltz and Julia Stern

Court Opinions Issued in the Second Quarter

MERC Is Not Required to Include in its Remedial Order a Provision Requiring the Employer to Restore the Status Quo

Clerical-Technical Union of Michigan State University v Michigan State University Board of Trustees and Michigan State University Administrative-Professional Association, MEA/NEA
455 Mich 862 (1997)
SC 104848, 104849 & 105072

In lieu of granting leave to appeal, the Supreme Court issued an order reversing the decision of the Court of Appeals reported at 214 Mich App 41 (1995) and reinstating MERC's decisions reported at 1992 MERC Lab Op 120, 1993 MERC Lab Op 409 and 1993 MERC Lab Op 345. MERC issued decisions in two separate cases finding that Michigan State University (MSU) had violated its duty to bargain with the Clerical-Technical Union when it unilaterally removed certain positions from that unit and placed them into the unit represented by the Administrative-Professional Association. These actions followed the completion of a large-scale reclassification study. Pursuant to this study, positions were also moved from the Clerical-Technical unit to the Administrative/Professional unit. In addition, positions were reclassified and/or retitled and given different pay grades. MERC issued a cease-and-desist order against MSU in both cases. In the second case it also ordered it to post a notice to employees. However, MERC did not order MSU to return the positions to their original unit. As MERC explained in its second decision, it was reasonable to assume that MSU may have relied on a 1978 Commission case to which MSU itself was a party as giving it the authority to unilaterally reclassify employees. MERC also found that the changes in bargaining units could not be separated from other changes, i.e., changes in job classifications, titles, and grades, which resulted from the study and which, by the time MERC issued its decision, had been in place for more than four years. The Court of Appeals concluded that by refusing to order a return to the status quo MERC had exceeded its remedial authority under Section 16(b) of PERA, which states:

> If upon the preponderance of the testimony taken the commission is of the opinion that any person named in the complaint has engaged in or is engaging in the unfair labor practice, then it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this act. MCL 423.216(b); MSA 17.455(16)(b) (Emphasis added)

The Court of Appeals held that because MSU was the wrongdoer, it should have been the party bearing the costs that its own wrong created. The Court held that MERC's order was a "patent attempt to achieve ends other than those which can fairly be said to effectuate the policies" of PERA. In its order reinstating MERC's decision, the Supreme Court said that the Court of Appeals had exceeded the scope of its power of review and substituted its own judgment for that of MERC.

No Duty to Bargain over the Assignment of Work to New Positions Where the Work Had Not Previously Been Performed Exclusively by Members of Charging Party's Unit

Kent County Deputy Sheriff's Association v Kent County Sheriff and County of Kent -and- Kent County Employees Union
MERC Case No. C92 L-250, 1996 MERC Lab Op 294
Unpublished Court of Appeals opinion issued August 19, 1997
COA 195601

In this unpublished opinion, the Court of Appeals affirmed MERC's dismissal of charges alleging that the Employer had a duty to bargain over the transfer of work to newly-created positions within the corrections division of the Sheriff's Department. The Deputies' Association represents a bargaining unit which includes corrections officers. In connection with an expansion of the jail, the County created three new civilian positions: reception/booking clerk, property/mailroom clerk, and inmate accounting clerk. The County placed these positions in the county-wide nonsupervisory unit represented by the Kent County Employees Union. The Court agreed with MERC that under Southfield Police v Southfield, 433 Mich 168 (1989), a union must show that the work has been performed exclusively by members of its unit as a prerequisite to establishing an obligation to bargain by the Employer over a decision to reassign work.

The Court also agreed with MERC that the Association had failed to establish that, prior to the creation of the new positions, corrections officers had exclusively performed duties assigned to the new positions such as data entry, collecting inmate property, sorting mail, and processing new inmates. To the contrary, the record indicated that nurses, cadets, inmate trustees and others had also performed these duties.

Significant Commission Decisions Issued During the Third Quarter

Housing Commissions Can Be Separate Employers under PERA

City of Grand Rapids -and- Grand Rapids Housing Commission -and- Grand Rapids Employees Association of Public Administrators -and- Grand Rapids Employee Independent Union
Case Nos. C96 E-97 & C96 E-98, 1997 MERC Lab Op __ (issued 7/1/97)

MERC concluded that amendments to the Housing Facilities Act, MCL 125.651, *et seq.*, MSA 5.3011, *et seq.*, granted sufficient new authority to the Grand Rapids Housing Commission for it to qualify as a separate employer under PERA. Previously, the City had treated the Housing Commission as a department of the City, and Housing Commission employees had been included in bargaining units with City employees. The former version of the Housing Facilities Act had given housing commissions the authority to hire and fire employees, but not the authority to fix their compensation without the approval of an appointing authority. Under the amended statute, housing commissions possess this authority unless the governing body of their incorporating authority chooses to take it away. Here, the City of Grand Rapids was prepared to pass an ordinance permanently granting the Housing Commission this authority. Therefore, the Grand Rapids Housing Commission will now possess all of the four general characteristics of an employer under PERA. That is, it will select and engage its employees; it will pay their wages; it will have the power of dismissal; and it will have power and control over the employees' conduct.

This case is currently before the Court of Appeals.

Definition of an Executive

Bay County -and- Bay County Association of Managers, Professionals and Supervisors
Case No. UC96 H-31, 1997 MERC Lab Op ___ (issued 7/1/97)

Applying the test set out in Detroit Police Department, 1996 MERC Lab Op 84, 105,[1] and reaffirmed City of Grandville (On Remand), 1997 MERC Lab Op 140, MERC concluded that the County's Finance Director, Public Health Director, Equalization Director, and Recreation and Youth Development Director were executives and could, therefore, be removed from an existing supervisory unit. MERC found the Finance Department and the Public Health Department to be "major departments" of the County and their directors to have policy-making responsibilities consistent with executive status. MERC also found the Recreation and Youth Development Division to be a "major department," even though it was designated on the County's organization chart as a division rather than a department. The Division Director reported directly to the County Executive, and his responsibilities were consistent with those of the directors of other major departments. In finding the Equalization Director to be an executive, MERC cited Mecosta County Bd. of Commissioners v Michigan Council 25, AFSCME, 166 Mich App 374 (1988), where the Court of Appeals concluded that performance of the statutory duties of a county equalization director, like those of a local assessor, necessarily involved policy-making duties sufficient to make the position executive.

MERC also concluded, however, that the County's Director of its Division on Aging and its Animal Control Director were not executives. Although the Director of the Division on Aging, like the Director of the Recreation and Youth Division, reported directly to the County Executive, the record did not establish that the services provided by this department were either mandated by statute or essential to the operation of the County. The Division on Aging, MERC concluded, was not a "major department"

[1]An executive means an employee who (1) is a policy-making head of a major department of a public employer; or (2) in the case of employers with 1,000 or more employees, is a chief deputy to a department head, or is the head of a section or division of a major department who reports directly to a chief deputy and who exercises substantial discretion in formulating, determining and effectuating management policy; or (3) pursuant to statutory or charter provisions, exercises a substantial degree of autonomy in carrying out his or her public services and who has direct access to or direct influence upon the governing body of a public employer in a policy making role; or (4) formulates, determines and effectuates management policy on an employer-wide basis.

of the County. Moreover, its director did not qualify as an executive under any other section of MERC's definition. MERC found it unnecessary to determine whether the Animal Control Department was a "major department" of the County, since it found insufficient evidence to conclude that the Animal Control Director either made policy or exercised a substantial degree of autonomy in carrying out her duties.

This case is currently before the Court of Appeals.

Charter Township of Shelby -and- UAW Local 1777
Case No. UC96 H-35, 1997 MERC Lab Op ___ (issued 8/12/97)

MERC rejected the argument of an Employer with 250 employees that its Assistant Building Department Director is an executive because he "formulates, determines and effectuates management policy on an employer-wide basis." MERC found that the Assistant Building Department Director formulates and helps effectuate policies pertaining to the operation of the Building Department. While these policies affect many citizens and those who do business with the Township, according to MERC this is not what it intended by "employer-wide" under the fourth section of its definition. The record demonstrated that the Assistant Building Department Director assists the Department Director in managing the department, but that the responsibilities considered by MERC to be executive remained with the Director.

Inaccurate Statements Made by Union President to Reporter Were Not Protected Where They Could Have Had the Effect of Alarming the Community

Meridian Township -and- Fire Fighters Association of Michigan
Case No. C96 G-160, 1997 MERC Lab Op ____ (issued 8/12/97)

MERC held that statements made by the president of the local fire fighters' union to a reporter were not protected because they were false and could have had the effect of alarming the community. The Respondent therefore had a legitimate and substantial business justification for disciplining him for these statements. In this case a television reporter from a local station stopped the union president to show him a press release issued by a member of the Township Board. The press release suggested that fire fighters had refused to report to work in emergencies during contract negotiations. In response, the union president made the following remark, which later appeared on TV:

> Meridian Professional firefighters never stopped coming back in on runs. In order to come back to a fire run, we have to be toned out, they have to call us back. In fact, they stopped calling us back because they said there was a problem with the overtime budget, money that was budgeted for overtime.

The union president later admitted that the Respondent had never totally stopped calling in off-duty fire fighters.

Duty to Bargain over the Transfer of Unit Work to Employees Not in the Bargaining Unit - Union's Lost Dues Do Not Constitute a "Significant Impact on Employees"

City of Detroit -and- Association of City of Detroit Supervisors
Case Nos. C95 G-135 & UC94 J-52, 1997 MERC Lab Op ____ (issued 7/1/97)

MERC dismissed a charge alleging that the Respondent had unilaterally removed bargaining unit work from its unit by assigning it to individuals whom the Respondent considered to be members of another bargaining unit. MERC found that the that facts did not satisfy the multi-part test set out in City of Detroit, Water & Sewerage, 1990 MERC Lab Op 34, 40-41.[2] Charging Party represented sanitation supervisors, including sanitation foremen. Respondent temporarily assigned nine nonsupervisory sanitation workers, represented by another union, to work as foremen to replace some sanitation

[2] Once it has been established that the work at issue has been exclusively performed by the Charging Party union, two elements are essential before a duty to bargain over a nondiscriminatory transfer of unit work can be imposed on a public employer.

First, the transfer must have a significant adverse impact on unit employees. The record must, for example, show that unit employees were laid off or terminated as a result of the transfer, that unit employees were demoted to lower paying jobs, that unit employees on layoff were not recalled as a direct result of the transfer, or that unit employees experienced a significant drop in overtime. A mere showing that positions were lost, or speculation regarding the loss of promotional opportunities for unit employees, is not enough to show a significant impact. . .

Secondly, the transfer dispute must be amenable to resolution through the collective bargaining process. . . To be amenable to resolution through the collective bargaining process, the decision to transfer work must be based at least in part on either labor costs or general enterprise costs which could be affected by the bargaining process.

foremen who had been promoted to a higher position. Respondent initially paid the sanitation workers "out-of-class" pay, and, over Charging Party's protests, continued to send dues from their paychecks to the union which represented nonsupervisory workers. Within 14 months, all nine had been formally promoted to foreman and were paying dues to the Charging Party. MERC held that there was no showing that the employees suffered significant adverse impact from continuing to be represented by their former union, as required by City of Detroit, Water & Sewerage, supra. The dues allegedly lost by Charging Party did not constitute the kind of adverse impact contemplated by City of Detroit. Compare this case with Allendale Public Schools, Case No. C96 B-39, 1997 MERC Lab Op 183, 1997 MERC Lab Op ____ (decision on motion for reconsideration issued 8/12/97), in which MERC held that the Respondent violated its duty to bargain by temporarily filling a permanent teaching vacancy with a "long-term substitute" who it hired as a permanent employee after one semester. During his first semester the "substitute" was not compensated in accord with the terms of the teachers' union contract. He also did not begin his probationary period under the Teachers Tenure Act until he was hired as a permanent employee. In its motion for reconsideration, MERC said that the "multi-part test set out in City of Detroit, Water & Sewerage, is not applicable when the Respondent has removed from the unit, temporarily or permanently, an intact established bargaining unit position."

Employer's Repeated Failure to Provide Union with Timely Written Grievence Responses as Required by the Contract Did Not Violate its Duty to Bargain in Good Faith

City of Pontiac School District -and- Pontiac Association of School Administrators
Case No. C96 A-17, 1997 MERC Lab Op ___ (issued 7/1/97)

MERC affirmed the conclusion of its Administrative Law Judge that the Respondent did not engage in unlawful "repudiation" of its contract with the Charging Party despite its failure to provide timely written responses as required by the contract to approximately 15 grievances over a three year period. The parties' contract required Respondent to hold meetings within a certain time period at step two and step three of the grievance procedure. It also required the Respondent to provide written answers within a certain period at both of these steps. The record established that Respondent had consistently failed to comply with the second requirement, but not that it had failed to meet within the time limits required by the contract. The record also did not establish that Respondent had refused to discuss these grievances or, as Charging Party contended, had refused to discuss them unless arbitration demands were made. MERC held that in the context of this grievance procedure, the repeated failure to provide a timely written answer was not a substantial enough breach of the grievance procedure to constitute a repudiation of the contract or of the collective bargaining relationship.

Union's Duty of Fair Representation - Union Had No Duty to File Section 6 Notice for Employees or Advise Them of This Provision

Detroit Board of Education -and- Teamsters Local 214 -and- Mary Coleman
Case Nos. C95 H-158 & CU95 H-29, 1997 MERC Lab Op ___ (issued 7/15/97)

Charging Party, a school bus driver, was recommended for termination for participating in an illegal work stoppage after she, and others, failed to leave their terminal on time because they were protesting late bonus checks. Charging Party's grievance was settled by the Respondent Union with an agreement to reduce her discipline to a 30-day suspension. MERC held that the Union fulfilled its duty to make a reasoned, good faith, nondiscriminatory decision regarding whether to proceed with the grievance. Under Section 6 of PERA, an employee disciplined for engaging in an unlawful work stoppage is entitled, upon request, to a hearing before the employer and a determination of whether he or she engaged in such work stoppage. MERC rejected Charging Party's argument that the Respondent Union owed the disciplined employees the obligation to request Section 6 hearings for them, or at least to advise them of the existence of this provision.

Other MERC Opinions Issued in the Third Quarter

Bangor Public Schools -and- Service Employees International Union, Local 586
Case No. C96 G-156, issued July 2, 1997

Administrative Law Judge Roy Roulhac concluded that the record did not support Charging Party's contention that the Employer suspended and discharged an employee because he was part of a union organizing effort. No exceptions were filed to the Administrative Law Judge's decision.

Lapeer County Road Commission -and- Lapeer County

Road Commission Supervisory and Clerical Employees Association
Case No. C96 E-96, issued July 15, 1997

Administrative Law Judge Bert Wicking dismissed a charge alleging that the Employer committed an unfair labor practice by failing to recognize the Union as the bargaining representative for the position of bookkeeper. The Administrative Law Judge held that the collective bargaining agreement gave the Employer the right to assign work without limitation and exclude part-time employees from the bargaining unit. In addition, the Administrative Law Judge determined that the charge was not timely since it was filed more than six months after the clerical position came into existence. No exceptions were filed to the Administrative Law Judge's decision.

City of Saginaw -and- Saginaw Fire Fighter Association, Local 102, IAFF
Case No. C96 B-34, issued July 15, 1997

MERC affirmed the Administrative Law Judge's finding that the Employer discharged a union representative because of his protected, concerted activities. MERC concluded that the employee's union activity was a motivating factor in the discharge and that the Employer's stated reason for the discharge was a pretext. MERC also held that the Administrative Law Judge did not err in labeling as hearsay the testimony of two City witnesses, or in failing to credit their testimony. To the extent that the testimony was offered to prove the truth of the matter asserted, it was hearsay and inherently unreliable. Although the out-of-court statements were not hearsay to the extent that they were offered to show what prompted City officials to discharge the employee, the record contains ample evidence to support the Administrative Law Judge's finding that the stated reasons were pretextual.

Mass Transportation Authority -and- Evelyn Karen Louis
Case No. C96 K-256, issued July 15, 1997

An employee filed an unfair labor practice charge alleging that she was blackballed and not hired for a part-time position because she filed complaints with the Department of Civil Rights and the NAACP. Administrative Law Judge Roy Roulhac held that the unfair labor practice charge did not state a cause of action under PERA. No exceptions were filed to the Administrative Law Judge's decision.

Senior Accountants, Analysts and Appraisers Association -and- Bowyer G. Castelle
Case No. CU96 J-41, issued July 16, 1997
Senior Accountants, Analysts and Appraisers Association -and- Henrietta Luckie
Case No. CU96 I-35, issued July 16, 1997

In companion cases, Administrative Law Judge Roy Roulhac found that Charging Party's allegations did not constitute a violation of the duty of fair representation under PERA because there was no contractual basis for the Union to file a grievance. No exceptions were filed to the Administrative Law Judge's decision.

Mio Ausable Schools, Board of Education and Mio Ausable Esp, MEA/NEA
C96 F-134, issued July 16, 1997

Administrative Law Judge Nora Lynch concluded that the record did not support Charging Party's claim that the Employer violated its duty to bargain by engaging in dilatory tactics following a consent election. She found that the Employer advanced legitimate reasons for its lack of progress in preparing an initial proposal and that it agreed on dates for negotiations once that proposal was ready. No exceptions were filed to the Administrative Law Judge's decision.

Michigan Association of Public Employees -and- Laura Jean Tucker
Case No. CU91 D-19, issued August 5, 1997

On remand from the Michigan Court of Appeals, Administrative Law Judge Nora Lynch dismissed an unfair labor practice charge alleging that the MAPE breached its duty of fair representation by failing to process a grievance on the employee's behalf. After the grievance was filed, the MAPE was replaced as bargaining agent by another union. Based on the recent Court of Appeals decision in Quinn v POLC & POAM, 216 Mich App 237 (1996), the Administrative Law Judge found that the MAPE could not have breached its duty to the employee since the responsibility for processing the grievance had been transferred to the new representative. In addition, the Administrative Law Judge held that Charging Party failed to demonstrate a breach of the collective bargaining agreement. No exceptions were filed to the Administrative Law Judge's decision.

City of Detroit -and- Association of City of Detroit Supervisors (ACODS)
Case No. UC96 I-40, August 12, 1997

MERC granted the Union's petition to clarify the bargaining unit to include the position of store operations supervisor. MERC rejected the argument that the unit clarification was untimely filed. Although the position was created in 1993 and revised in 1995, it was not created within a department represented by the Union until April 1996. The Union demanded recognition of the store operations supervisor shortly after learning that a position with this title had been created within the department. The unit clarification petition was filed only two months after this demand, after the Employer failed to act. MERC also rejected the Employer's contention that the position is a senior supervisor, a position expressly excluded from the unit description. MERC concluded that the exclusionary language in the unit description refers to a specific position within the department titled "senior supervisor" and was not intended by the parties to be a generic reference to high level supervisors.

City of Detroit (Water and Sewage Department) -and- Robert Wesley Taylor II
Case No. C95 J-218, issued August 12, 1997

Charging Party moved for reconsideration of MERC's Decision and Order finding that there was no evidence that the Employer unlawfully discriminated against Charging Party or otherwise interfered with his protected right to process grievances. MERC held that the motion simply restated the arguments presented by Charging Party in his exceptions.

Detroit Association of Educational Office Employees, AFT Local 4168, AFL-CIO -and- Joanne C. Robertson
Case No. CU96 F-24, issued August 25, 1997

Director and Chief Administrative Law Judge Shlomo Sperka dismissed an unfair labor practice charge alleging that the Union breached its duty of fair representation either by ignoring her complaint or by processing it in a perfunctory fashion. The Administrative Law Judge found that the Union's response was neither arbitrary nor capricious. The Union was aware of the issue raised by Charging Party's complaint and decided that it did not form the basis of a meritorious grievance. According to the Administrative Law Judge, this determination was in accordance with the plain language of the collective bargaining agreement. The Administrative Law Judge also found that no prejudice resulted from any delay on the Union's part in notifying Charging Party of the status of her grievance. No exceptions were filed to the Administrative Law Judge's decision.

Village of Kalkaska -and- United Steelworkers of America, AFL-CIO-CLC
Case No. R97 B-38, issued September 8, 1997

MERC rejected the Union's petition to include the position of administrative assistant in the proposed bargaining unit. Although the administrative assistant was not hired as a personal and/or confidential secretary and had not performed confidential work in the past, MERC found that she has been designated to provide clerical assistance to the Village manager who will be responsible for formulating labor policy for the Employer during contract negotiations. Therefore, MERC concluded that the administrative assistant is a confidential employee who should be excluded from the proposed unit. With regard to other positions which the Union sought to represent, MERC found that a question of representation existed and directed an election.

Wayne State University -and- International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Region 1
Case No. C96 E-108

MERC affirmed the Administrative Law Judge's finding that the Employer did not violate PERA by unilaterally implementing an attendance standards policy. MERC rejected the Union's argument that the Administrative Law Judge failed to respond to the unfair labor practice charge by considering whether the Employer refused to bargain over the impact of its decision to implement a new attendance policy. According to MERC, the charge was directed solely at the unilateral implementation of the attendance standards policy and did not include any reference to impact bargaining. In any event, MERC concluded that the Administrative Law Judge did indeed address the Union's impact bargaining claim in her Decision and Recommended Order. MERC agreed with the Administrative Law Judge that the language of the agreement between the parties constituted a clear and explicit waiver of the Union's right to negotiate over both the implementation and the impact of the attendance policy. MERC concluded that any potential contract violation or conflict between the attendance policy and other contract provisions must be resolved through the contractual grievance procedure.

Clarkston Community Schools -and- Michigan Education Association -and- Rosemary Grable
Case Nos. C97 E-102 and CU97 E-18
Administrative Law Judge Roy Roulhac dismissed an

unfair labor practice charge filed by Grable against both her Employer and her Union. The charge concerned the Employer's requirement that Grable use sick leave while recovering from a job-related injury. The Administrative Law Judge held that the agency is without authority to remedy the dispute because Charging Party failed to allege that the Employer's action was taken for the purpose of interfering, restraining or coercing her in her right to engage in concerted or union activity. Similarly, the Administrative Law Judge found that the charge against the Union was without merit since the Charging Party failed to allege that the Union's decision not to process a grievance on her behalf was arbitrary, discriminatory or in bad faith. No exceptions were filed to the Administrative Law Judge's decision.

MERC'S 2ND ANNUAL CONFERENCE

by Denise Gall

In response to the success of our first annual Public Sector Labor Relations Conference, the Michigan Employment Relation Commission presents the second annual Public Sector Labor Law Conference slated for June 8 and 9, 1998. The Bureau of Employment Relations (BER) will host the conference, in conjunction with the Eastern Michigan University Labor Studies Program, at the Eagle Nest Conference Center at Eastern Michigan University, Ypsilanti. As you requested, we are expanding the conference from one to two days. Again, this conference will be designed for people who work in public sector labor relations law -- arbitrators; attorneys; academics; union officers; staff and members; elected officials; and administrators and staff of all size public employers. Anyone with suggestions for topics and/or speakers should contact Denise Gall at 313-256-2767. More information will be forthcoming, as plans begin to take shape.

LABOR-MANAGEMENT BARGAINING PRACTICES: A MEDIATOR'S PERSPECTIVE*

James C. Amar, Labor Mediator
Michigan Bureau of Employment Relations
continuation from MERC Newsletter of November 1997

Helpful Techniques:

Sidebars -- When parties are in mediation they should not discredit suggestions or ideas for proposals irrationally. If a party wishes to make a serious proposal that it believes will produce movement, then consideration for debating its value in a side bar with the mediator, which may include someone fromt he other side of the bargaining table, is an extremely meaningful function of mediation. A party that chooses to float an unwired proposal that was not shared with the mediator invites the possibility of achieving disastrous results that were not anticipated.

Focus on intersts, not personalities -- In traditional bargaining, it is not uncommon for negotiations to focus on personalities. Emphasis of this nature steers bargaining away from dealing with the issues. Occasionally, a dispute comes before me and I discover that one side or the other has not identified its major needs. A method I have applied with some success incorporates techniques fround in interest-based bargaining. These techniques help the parties concentrate on their true interests and clearly evaluate options, avoiding the distractions of attention to the negotiators' styules and personalities. The techniques are:

- Using standards to evaluate the options
- Brainstroming
- Idea charting

Employing standards to evaluate the options that were offered to settle issues sharply clarifies the best alternative available to the parties. Idea charting on a blackboard or similar apparatus can spur dialogue that stimulates the parties to brainstorm ideas which in turn can be charted. Visually, charting highlights concepts that otherwise may escape attention. In one public sector case where I applied this exercise, the union was convinced by a graphic depict ion of options to c hoose an alternative proposal for a pension improvement, which the employer eventually accepted.

Candor -- Candor demonstrated by a party in labor negotiations is a forceful element because it displays a genuine demeanor to the committee sitting at the other side of the table. One labor attorney who represents public employers has a custom of sharing total labor c ost information with the union. This style is particularly helpful since it supports informed discussion with the union negotiators, especially if the committee is comprised of persons new to union activism and the collective bargaining process.

Put it in writing -- During the course of bargaining, labor and management negotiators often gloss over isues which they assumed were understood and amicably resolved. The failure to reduce these items to writing often produces the shocking revelation to the parties at the last minute that their interpretation of accords reached verbally differs substantially.

Some attorneys follow a practice of arrivingat a written tenative agreement on a number of items and, pending ratification of the full contract, remove them from the bargaining table. This procedure ensures that each

resolution is clearly understood by both parties. The subjects the parties agree on may be reduced to final form as an additional measure to guarantee that a meeting of the minds was attained. This negotiating style is effective for various reasons. First, it lessens confusion over the number and status of issues the parties are over. Second, it distinguishes key issues which should be the core of attention when packages are put together for closure in the pivotal rounds of bargaining. Third, this method discourages misunderstandings which can materialize in the final moments of negotiations.

Key your eye on the future -- Parties must recognize that life continues after negotiations are resolved. Labor and management bargainers should aim for a fair agreement arrived at through good faith bargaining. An honest approach at the negotiating table will fertilize the professional respect and decorum which is fundamentally important to administration of the contract and to positive, long-term labor-management relations.

For additional information about MERC Mediation Services, contact the authro at (313) 256-3542

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ACT 312 DECISIONS & FACT FINDING REPORTS
July 1, 1997- September 30, 1997

Act 312

RECEIPT DATE	EMPLOYER	UNION	ARBITRATOR
07/07/97	City of Monroe /Police Dept.	Police Officers Labor Council	J. Edward Simpkins
07/11/97	Charter Township of Grand Blanc	Police Officers Labor Council	Teddy J. Baird
07/16/97	Lapeer County Sheriff Dept.	Police Officers Labor Council	Elaine Frost
07/16/97	Ingham Co. Bd. Of Commission-Sheriff	FOP 141 - Supervisory Division	John B. Kiefer
08/27/97	City of Monroe	Police Officers Labor Council	Henry J. Sefcovic
09/05/97	City of Southfield	Police Officers Assoc. Of MI	Paul Jacobs

09/12/97	Grand Blanc	Police Officers Labor Council-Patrolmen	Allen J. Kovinsky

Total Awards/Reports Received: 7

Fact Finding

RECEIPT DATE	EMPLOYER	UNION	FACT FINDER
08/04/97	East Lansing Public Schools.	E. L. Education Assoc.-Teachers	David L. Poindexter
08/25/97	Ferris State University	Ferris Faculty Assoc. MEA/NEA	Carl D. Kerekes
09/09/97	Meadow Brook Medical Care Fac.	Teamsters Local 214	Jamil Akhtar

Total Awards/Reports Received: 4

MERC MEETING SCHEDULE 1998

- March 19, 10 a.m. - Detroit
- April 2, 10 a.m. - Lansing
- May 8, 10 a.m. - Lansing

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